IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 673 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GALABHAI MANSUKHBHAI CHAUHAN

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 673 of 1990

MR AKIL KURESHI for Petitioner No. 1-2

MR K P RAVAL, A.G.P for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 25/09/2001

ORAL JUDGEMENT

The appellants have challenged the judgement and order dated 5th July, 1990 of the learned Additional Sessions Judge Panchmahal at Godhra in Session Case No. 140 of 1989 convicting them for the offence under

Sections 436, 429, 504 read with Section 114 of the Indian Penal Code and sentenced them to suffer rigorous imprisonment of five years for the offence under Section 436, rigorous imprisonment of four years for the offence under Section 429, and the rigorous imprisonment of three months for the offence under Section 504 and also imposing a fine of Rs. 2,000/- on each of them under Section 436 of the Indian Penal Code, in default to undergo further imprisonment of three years. All the substantive sentences of imprisonment were ordered to run concurrently.

2. The prosecution version was that on 25th June, 1989 there was a quarrel between the complainant Mangalbhai and these two accused persons in the evening and the complainant had gone to Sehra Police Station to lodge a complaint in that connection. During his absence both the accused persons came to the house of the complainant shouting abuses in the name of the complainant and set his house on fire, as a result of which all his household things as well as two bullocks one buffalo and a goat perished, due to fire resulting in a loss of Rs. 60,000/- to the complainant. According to the prosecution case, complainant's wife Galiben who had witnessed the incident narrated it to her husband Mangalbhai who lodged the F.I.R., Exh. 11 at 2:30 a.m. at Sehra Police Station in respect of this incident.

3. The learned Counsel appearing for the appellants contended that despite the fact that there were other members of the family in the house and there were neighbours nearby, no independent witness has been examined by the prosecution. Even the other members of the family were not examined. It was contented that it was not possible to believe that both the accused persons would go there all the way shouting abuses without being stopped by the neighbours. Even for the safety of their own houses the neighbours would have prevented them from setting the house of the complainant on fire. It was submitted that, the story that accused person came shouting cannot be accepted because no neighbours are said to have come out due to the shouts. The Counsel argued that, the story that one of the accused had gone to the rear of the house which was on the western side and set the house on fire was inherently improper because there was no reliable evidence to show that there was any door on the western side of the house. He submitted that it was likely that due to the animosity which was evident from the complaint lodged in the evening around 5:00 p.m. by Mangalbhai, these accused persons have been falsely implicated in respect of the fire that engulfed at the

house of the complainant. It was further contented that it was a dark night as admitted by Galiben, and she therefore, could not have witnessed the incident. It was contented that from her police statement a contradiction was proved to the effect that Galiben had gone to the adjoining field because she was afraid, and therefore, she could not have seen the incident.

4. The prosecution version mainly rests on the deposition of the only eye witness Galiben. Galiben wife of the complainant, in her deposition Exh 9 has stated that on the day of the incident she was at her house and at that time, her Daughter in law Kamla and her sister in law Bhuri were also in the house. At the relevant time, she was standing outside the house when the accused no. 1 Gala Mansukh, Accused no. 2 Kalulaxman had come there abusing her husband. She identified both these persons. They were asking where had Mangaliya gone. She has stated that there was grass stacked in the rear room of house and the accused Kalulaxman had said that it should be set on fire. Accused Gala Mansukh had thereupon set her house on fire. The accused threatened them that they would be thrown in the fire. Therefore they raised shouts. On hearing shouts Nana Gora, Vaja Kadva, Prabath Kadva and others came there. Both the accused therefore ran away. Due to the fire all the household goods were destroyed. Their two bullocks, one buffalo and a goat also died due to the burns. A certificate has been produced in support of this fact, issued by the veterinarian doctor at Exh. 6, which shows that he had gone to the spot and noticed that the cattle were charred to death. He could find out from horns that there was one buffalo and two bullocks. Galiben has stated that each and everything in their house was destroyed and they have remained only with their clothes on and nothing else. There was no supply of water for extinguishing the fire and therefore the fire could not be extinguished. When her husband came at night she narrated the incident to him. In her cross examination, she denied that there was no opening in the western side of her house and has insisted that there was an opening on the western side, and that one could come out of the house from the rear side. She stated that there was grass in the rear room. She has admitted that there was a quarrel over the Mahuda tree which had fallen down. There was a quarrel on that evening at about 5:00 p.m. over the Mahuda tree, between the accused persons and her husband, and her husband had gone to the police station for filing the complaint in that regard.

5. There is nothing brought out in the cross

examination of this witness which could create doubt against her version that the accused persons had come in the evening around 8:00 or 8:30 p.m., on the day of the incident abusing in the name of her husband and that they set her house on fire, as a result of which all the household things were destroyed and their cattle were burnt to death. The Panchnama Exh.7 fully corroborates her version that all their house household things were destroyed and the house was burnt to ashes. Certificate of the Vetararian Officer dated 26.06.1989 at Annexure C also corroborates her version. The deposition of her husband Mangalbhai at Exh. 8 and the F.I.R. Exh. 11 lodged by him fully corroborates the version of this eye witness who had narrated the incident to her husband which was reflected in his deposition as well as the F.I.R.. The accused persons were known to the eye witness and there was no question of any mistaken identity in this case. The fact that she had gone out of the house when it was set on fire was a natural conduct on her part, and on that basis it cannot be said that she had not witnessed the incident. It was expected of her to save herself for which purpose she had to go out of the house and as stated by her she had gone to the adjoining field. She saw her house burning down from there. There is nothing on record to show that other eye witness from the neighbourhood had witnessed the incident and had been withheld by the prosecution. There was no point in examining any other member of the house for repeating version of Galiben. The fact that there was a quarrel at 5:00 p.m. for taking wood of a Mahuda tree which had fallen down some days back and that in that connection Mangalbhai had gone to file a complaint against the accused persons, which is in fact suggested in the cross-examination of the eye witness, would go to show that there was a sufficient motive for these two accused persons to go to the house of the complainant and commit these offences.

6. The offence under Section 436 of the I.P.C. is a very serious offence for which the maximum punishment provided therein is imprisonment for life. From the evidence on record it is clear that the guilt of these accused has been proved beyound any reasonable doubt and the Trial Court was fully justified in holding the appellants guilty of the offences levelled against them. The sentence that is imposed can by no means be said to be harsh. On the contrary it appears that a lenient sentence has been imposed, having regard to the seriousness of the offence committed by the appellants. I find myself in complete agreement with the reasoning adopted and the findings reached by the learned Trial

Judge and there is absolutely no warrant for interference with the impugned judgement and order.

The Appeal is therefore dismissed. The bail stands cancelled.

(R.K. ABICHANDANI,J.)

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